

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of	)	
	)	
HAWAII ELECTRIC LIGHT COMPANY, INC.	)	Docket No. 2017-0122
	)	
For Approval of a Power Purchase Agreement for	)	
Renewable Dispatchable Firm Energy and	)	
Capacity.	)	
_____	)	

**HAWAII ELECTRIC LIGHT COMPANY, INC.'S**  
**MOTION FOR RECONSIDERATION OF DECISION AND ORDER NO. 38395**

**MEMORANDUM IN SUPPORT OF MOTION**

**AND**

**CERTIFICATE OF SERVICE**

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HAWAII ELECTRIC LIGHT COMPANY, INC. (“Hawaii Electric Light” or “Company”), by and through its counsel, Kobayashi Sugita & Goda, LLP, moves the Public Utilities Commission (“Commission”) for reconsideration of Decision and Order No. 38395, issued by the Commission on May 23, 2022 (“D&O No. 38395”). For the reasons set forth in the attached Memorandum in Support of Motion, the Company submits that reconsideration is appropriate as D&O No. 38395 is unreasonable, unlawful, and erroneous on a number of points. Specifically, D&O No. 38395: (1) exceeds the scope of the remand from the Hawaii Supreme Court in HELCO I and HELCO II; (2) by essentially determining that the Hu Honua Project must be carbon negative, establishes a new legal standard for GHG emissions that is beyond the scope of applicable law as has been applied to other projects; (3) includes a number of incorrect factual assertions which are inconsistent with the record, including the Company’s need for the grid services that the Project will provide; and (4) incorrectly states that the Commission lacks authority to enforce conditions against Hu Honua, which would ensure that such conditions are, in fact, binding.

This Motion is made pursuant to Hawai'i Administrative Rules ("HAR") §§ 16-601-137 and 16-601-138, and is based on the attached memorandum in support of motion and citations set forth therein. No hearing is requested.

Dated: Honolulu, Hawai'i, June 2, 2022.

/s/ Joseph A. Stewart

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**MEMORANDUM IN SUPPORT OF MOTION**

Applicant HAWAII ELECTRIC LIGHT COMPANY, INC. (“Hawaii Electric Light” or “Company”) submits its memorandum in support of motion as follows.

**I. INTRODUCTION**

Hawaii Electric Light submits that reconsideration of Decision and Order No. 38395, issued by the Commission on May 23, 2022 (“D&O No. 38395”) is appropriate as it is based on conclusions that are not consistent with applicable law, addresses issues outside the scope of the remand from the Hawaii Supreme Court, and is not supported by the record in this docket.

Specifically, as discussed more fully herein, the Commission’s analysis of the greenhouse gas (“GHG”) emissions is inconsistent with the entirety of the record in this docket. The uncontroverted testimony of the witnesses of Hawaii Electric Light, Hu Honua Bioenergy, LLC (“Hu Honua” or “Seller”), and the Consumer Advocate all confirmed that the implementation of the Hu Honua project would result in a substantial, material reduction of GHG emissions as compared to the alternative scenario without the Hu Honua project.

Under applicable law, a project is not even required to result in a reduction of GHG. To that end, every renewable project that has been approved by the Commission has met its obligations under Hawaii Revised Statutes (“HRS”) § 269-6 by showing the difference between

the estimated project lifecycle emissions as compared to the estimated avoided lifecycle emissions.

Yet, in D&O No. 38395, the Commission spends a significant portion of the order focusing on the viability of Hu Honua's commitment to ensure that the Hu Honua project itself results in a reduction of GHG emissions. All renewable projects will have some GHG emissions associated with the creation of materials, transportation, construction, and operation of the project. Respectfully, the Company submits that denial based on the fact that there will be emissions, or that the Commission is somewhat skeptical that the carbon recapture efforts will completely ensure that the project itself is carbon negative would essentially create an entirely new standard for approval of a project that has not been met by any prior project.

Under the standard that the Commission has applied in all other similar dockets, i.e., whether there will be a net GHG savings between the project GHG emissions and avoided GHG emissions, the record before the Commission clearly establishes that there will be such a reduction. Specifically, as confirmed by the Company, Hu Honua, and Consumer Advocate witnesses, that comparison is anticipated to result in a net reduction of over 1.4 million tons of CO<sub>2</sub> emissions. There is no conflicting testimony on this point in the record. Even if the Commission is skeptical of the ability of Seller to meet carbon negativity for the project, there is absolutely no basis to question such a significant reduction when compared to the avoided GHG analysis that has been firmly established by the evidentiary record of these remanded proceedings.

Further, the Commission's skepticism of the enforceability of any conditions it imposes on Hu Honua is not supported by law and is inconsistent with past Commission orders. Imposing a condition that Hu Honua must meet its commitments or be subject to Commission

enforcement actions, should essentially eliminate the Commission's concerns about Hu Honua meeting its commitments - and therefore would address virtually all of the reasons that it cited for the denial of the Application.

In light of the fact that the record clearly establishes that there will be such a reduction of GHG emissions as compared to the avoided case, and the fact that the Commission can enforce conditions of approval against Hu Honua, the Commission's focus on pricing of the project and other non-price issues goes well beyond the scope of the explicit remand instructions received from the Hawai'i Supreme Court that were to govern these remanded proceedings.

Specifically, in 2017, the Commission approved the Amended and Restated Power Purchase Agreement ("A&R PPA") between the Company and Hu Honua. The appeal from Participant Life of the Land ("LOL") raised only three points of error, arguing that the Commission: (1) failed to explicitly consider GHG emissions pursuant to HRS § 269-6; (2) denied LOL due process to protect its interest in a clean and healthful environment by restricting its participation; and (3) abused its discretion by denying LOL full party status in the proceeding. As confirmed by the record, no other issues were appealed by any other party, including the pricing mechanism.

In the decision known as *HELCO I*, the Hawai'i Supreme Court remanded the Commission's prior approval back for further proceedings on two limited issues: (1) completing a sufficient analysis of the impacts of the underlying Hu Honua project ("Project") on GHG emissions; and (2) allowing LOL an opportunity to meaningfully participate. As discussed herein, the record clearly establishes that the GHG analysis was not only performed, but objectively shows a significant reduction between the estimated project GHG emissions and the avoided GHG emissions. That was the sole analysis that the Hawai'i Supreme Court required

the Commission to perform. To focus on other issues already decided by the Commission- such as the pricing mechanism - constitutes the raising of new issues that were not subject to a prior appeal. Put simply, if the pricing was satisfactory for approval before, and the GHG emissions show a substantial reduction for the Project, then how can the pricing be the reason for denial now? This is tantamount to the Commission reconsidering an issue that was not challenged on appeal. Taking such action is directly contradictory to the Hawai'i Supreme Court decision known as *HELCO II*, wherein the Court explicitly directed the Commission to solely focus on the issues raised in *HELCO I*. In so doing, the Hawai'i Supreme Court confirmed that the remand was not for the purpose of reconsidering decisions which the Commission had already rendered. The Commission's focus on such external issues is in direct contravention of this explicit direction, and is therefore contrary to law.

Another example of D&O No. 38395's unsupported conclusions is the Commission's statements that Hawai'i Electric Light will not use the grid supporting services that the Project will provide. The Commission's conclusions on this point do not reflect the position of the Company, and are not supported by the record.

As noted in the testimonies of various Company witnesses, the Project will provide grid support services that will be used by the Company immediately and throughout the term of the A&R PPA. As testified to by Lisa Dangelmaier and Robert Uyeunten, the Hu Honua Project will provide grid support services that are very much needed by the Company. Some of these benefits and services, if not provided by the Hu Honua Project, will need to be provided by firm generation projects, as they cannot be derived from solar plus battery projects. As there are no other new firm generation projects that are as close to completion as the Hu Honua Project (thereby underscoring the Project's significantly lower development risk profile), the

unavoidable conclusion is that these services will need to be provided by fossil fuel generation in the near term. The increased future use of more fossil generation, as testified to by Christopher Lau, would be inconsistent with the State's directive to the Commission to encourage renewable generation, energy security and independence, and to avoid fuel price volatility. In sum, neither the position of the Company nor the record of these proceedings support the Commission's conclusion that the grid benefits from this Project are not needed for the Hawai'i island grid.

For the reasons set forth herein, the Company respectfully submits that reconsideration of D&O No. 38395 is both necessary and appropriate.

## **II. DISCUSSION**

### **A. The Commission's Focus On The Project Emissions And Not The Avoided Emissions Is Inconsistent With The Record And Appears To Create A New Standard That Has Not Previously Been Applied To Other Renewable Projects**

In D&O No. 38395, the Commission spends most of its focus on a GHG emissions analysis questioning the achievability of Hu Honua's commitment that the Hu Honua Project will be carbon negative, emphasizing a proposed theory of how a small variance in Hu Honua's projections could impact the feasibility of its ability to meet said commitment. *See, e.g.* D&O No. 38395 at 69 (focusing on the possibility that Hu Honua's "Carbon Commitment does not offer sufficient reassurance against the risk of the Project becoming a net GHG emitter, as it could be quickly swallowed by a relatively small change in assumptions."). *See also, Id.* at 51, 52, 90-91, 117, and 126.

First, as discussed more fully below, if imposed and enforced by the Commission, there should be no question that Hu Honua will meet such a commitment - as it would otherwise face enforcement remedies from the Commission.

However, separate and apart from that, the Company is very concerned that the Commission's flawed decision to focus virtually all of its GHG analysis solely on this issue of the Project's proposed carbon neutrality, appears to create a novel standard of review for GHG impacts that has no basis in law or precedent.

The plain language of HRS § 269-6 undoubtedly does not require carbon neutrality for a proposed project. Moreover, every project that has been reviewed and approved by the Commission to date, has had GHG emissions directly associated with it. Indeed, none of those projects were carbon negative, when focusing solely on the projects themselves. See, e.g. Docket Nos. 2018-0430, 2018-0431, 2018-0432, 2018-0433, 2018-0434, 2018-0436, 2018-0435, and 2019-0050. In those cases, to fulfill its obligations under HRS § 269-6, a proposed project would compare the estimated GHG emissions of the project with the estimated GHG emissions in the avoided scenario where the project is not constructed. That is the standard to which all other projects have been reviewed for GHG impacts before this Commission; and is the appropriate standard that must be applied in this matter, now.

That D&O No. 38395 focuses so much attention on the Project's carbon negativity and comparatively little on the significant GHG reductions that will result when considering the avoided GHG emissions, represents a wholesale change in approach by this Commission. The Company submits that under the proper standard prescribed by HRS § 269-6 and applied heretofore to all other prior projects, the voluminous evidentiary record before the Commission clearly establishes that there will be a substantial reduction between the anticipated Project GHG emissions, and the anticipated avoided GHG emissions if the Project is put in service.

D&O No. 38395 actually properly identifies the key evidence provided by the Company and its consultant Ramboll US Consulting, Inc. ("Ramboll") for the GHG portion of the

remanded proceedings, and even describes the “Net Lifecycle Emissions” calculation formula provided by the Company and Ramboll as part of the evidentiary record of the proceeding:

As noted above, HELCO submitted a separate GHG analysis performed by Ramboll, which reported the total net GHG emissions impact associated with the Project. In so doing, Ramboll independently estimated the avoided GHG emissions associated with the Project, while relying on ERM’s estimates for the Project’s lifecycle GHG impact, to arrive at a total “Net Emissions” GHG impact for the Project.

Ramboll defines the Project’s “Net Lifecycle Emissions” as the Avoided Emissions from Fossil Fueled Plants (“Avoided Lifecycle Emissions”) less the Emissions from the Project (“Project Lifecycle Emissions”), which Ramboll relied on ERM to provide. Accordingly, Ramboll applied ERM’s Project Emissions estimate of (30,499) MT CO<sub>2</sub>e to its estimate of Avoided Lifecycle Emissions to conclude that the Project will result in a Net Lifecycle Emissions Reduction of 1,464,742 MT CO<sub>2</sub>e:

Net Lifecycle Emissions Reduction	=	Avoided Lifecycle Emissions	-	Project Lifecycle Emissions
1,464,742 MT CO <sub>2</sub> e	=	1,434,243 MT CO <sub>2</sub> e	-	-30,499 MT CO <sub>2</sub> e

D&O No. 38395 at 70-71. However, this acknowledgement of GHG reductions is essentially disregarded, as the Commission instead, chooses to solely focus on its skepticism of Hu Honua’s ability to achieve its commitment to be carbon negative - and then simply expands and extrapolates those concerns to somehow reach a result that the total avoided GHG savings will be insignificant. As an example, D&O No. 38395 provides:

According to Hu Honua, the Project is estimated to produce more than 8,000,000 metric tons of Co<sub>2</sub> over the term of the Amended PPA. As the vast majority of these emissions are associated with the stack emissions associated with operating the Project, based on HELCO’s simulated dispatch models, there is a high degree of confidence that such emissions will result if the Amended PPA is approved.

To mitigate these significant GHG emissions, Hu Honua commits to sequester GHGs, or to purchase carbon offsets, sufficient to ensure the Project is net carbon negative by 30,000 metric tons by the end of the PPA term (2051). However, as discussed below, the Commission does not find this claim to [be] credible due to Hu Honua's reliance on a number of speculative assumptions to support its estimated sequestration results. The Commission's concerns are exacerbated by the sensitivity of the ERM Analysis, which leaves little margin for error. For example, a relatively small change in certain key inputs (e.g., a change of 1% to stack emissions, belowground carbon loss, aboveground carbon sequestration, or belowground carbon sequestration), could negate the net 30,000 MT CO<sub>2</sub>e reduction estimated in the ERM Analysis, and instead result in the Project being a net emitter of GHGs over its lifetime. Even when taking into account the avoided lifecycle GHG emissions calculated by the Ramboll Analysis, estimated to be roughly 1,400,000 MT CO<sub>2</sub>e, the uncertainty surrounding Hu Honua's ability to sufficiently sequester carbon could still result in the Project being a significant net emitter of GHGs.

This undermines confidence in Hu Honua's represented ability to sequester enough carbon to offset the significant GHG emissions the Project is expected to produce. Should sequestration efforts fall short, Hu Honua's plan to purchase carbon offsets has not been sufficiently developed, and it is uncertain whether it would be sufficiently robust.

D&O No. 38305 at 51-54 (emphasis added).

However, while the Commission focuses on the "relatively small" changes such as 1% of stack emissions, it ignores that such small changes would not negate the substantial savings when compared to avoided GHG emissions. Specifically, using the Commission's own calculation of the anticipated project GHG emissions of 8,035,804 MT CO<sub>2</sub>e set forth above,<sup>1</sup> in order for Hu Honua to achieve its commitment to be carbon negative by 30,000 MT CO<sub>2</sub>e, it would need to sequester 8,065,804 MT CO<sub>2</sub>e. Importantly, in order for the Project emissions to exceed the avoided emissions, Hu Honua's sequestration efforts would need to fall short by more

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<sup>1</sup> The Company notes that this calculation does not appear in the record before the Commission and appears to be a Commission-created document as to which the parties did not have a chance to submit evidence.

than twenty percent. Put another way, even if Hu Honua were to sequester only 6.6 MT CO<sub>2</sub>e, there would still be a net reduction as compared to the avoided GHG emissions. This variance is not simply a “relatively small change” or “1%” here or there, and does not leave “little margin for error” as the Commission suggests. *See id.* at 52, 69.

Most importantly, aside from the Commission’s speculation of purported small margins of error, there is simply no evidence in the record that would support a conclusion that Hu Honua will miss its commitments by such a significant order of magnitude. Indeed, as properly noted by the dissent in this proceeding:

No other Party or Participant has offered an independent analysis to substitute or rebut Hu Honua and HELCO’s respective 2021 GHG analyses or proffered any substantial evidence that undermines the ultimate conclusions of their analyses indicating that the Project will result in a significant reduction of GHG emissions. Additionally, there is no material evidence in the record that contradicts the Applicants’ GHG Analyses, suggesting that HELCO and Hu Honua’s assumptions and methodologies are indeed reasonable.”

Dissent at 9-10. As aptly noted by the dissent:

The Majority states that the Project relies on speculative assumptions and unsupported assertions and therefore the GHG analysis is not sufficiently supported. The Majority questions the ability to sequester enough carbon to offset GHG emissions and determines that the plan to purchase offsets has not been sufficiently developed. However, the Majority misses the point that the evidence demonstrates that Hu Honua has agreed to plant significantly more trees than it harvests in order to be carbon negative and reduce emissions – and there is no evidence to the contrary that it will not follow through with its commitment.

The GHG analysis, by design, is based on assumptions and projections 30 years into the future because the Project has not started yet. For that reason, Hu Honua agreed to written commitments that it would measure the actual emissions and sequestration on an annual basis over the 30-year term as it cannot reasonably know or predict with certainty what the emissions and sequestration will be.

What we do know, however, is that Hu Honua has committed, as a condition of approval, to be carbon negative, increasing the number of new trees it will plant or grow if needed to ensure that more emissions will be sequestered than emitted. To the extent there are any perceived deficiencies with how the Project will quantify and carry out this commitment, Hu Honua agreed to adopt any reasonable assumption or methodology (for example, changes to its carbon calculator) that the Commission prefers. Given this and the fact that the Majority has not recommended any changes in the assumptions and methodology that would make the analysis sufficient, demonstrates that there will never be an analysis that would be deemed sufficient in the Majority's subjective eyes, nor will there ever be a set of conditions or outcome upon which the Majority would approve this Project.

Dissent at 13-14.

To this sentiment, the Company concurs, and respectfully requests that this Commission reconsider its findings and conclusions regarding the total GHG impacts for the project in D&O No. 38395.

**B. The Commission's Statements That Hu Honua's Commitments Are Uncertain Ignores The Fact That The Commission Has The Authority To Enforce The Terms Of Its Own Orders**

As noted above, the Commission's stated concerns regarding Hu Honua's GHG commitments do not appear to come from any testimony in the record that establishes that Hu Honua is either unwilling or unable to meet such commitments. Rather, the concerns seem to be based on the Commission's subjective assumptions that Hu Honua may not live up to its commitments. Further, the Commission goes on to speculate that it would have no recourse against Hu Honua if it failed to meet its commitments. These concerns are expressed throughout D&O No. 38395, and particularly in Conclusions of law 7(G) and 8. Specifically in paragraph 8, D&O No. 38395 states:

8. It is unclear whether the Commission would be able to enforce the Carbon Commitment on Hu Honua.

A. Although Hu Honua has “stipulate[d] to ongoing review by the [Commission] for purposes of reviewing and enforcing Hu Honua’s carbon negative commitments,” and “agree[d] to cure any shortcomings within a reasonable period of time,” it is unclear what would result if Hu Honua were to disagree with or object to a Commission finding that an aspect of the Carbon Commitment was not being met.

D&O No. 38395 (footnote omitted).

The Company notes that such conclusions are contrary to both applicable law and practices of the Commission wherein it has repeatedly imposed conditions of approval which require action from non-regulated parties to agreements that are approved by the Commission. Put simply, to the extent that the Commission has issues with any of the issues it raises in D&O No. 38395, including the GHG commitments, it has the ability to impose such a condition on Hu Honua.<sup>2</sup>

As to the initial point, the enabling statutes for the Commission clearly establish that it is in fact empowered to enforce its orders by statute and its own regulations. Specifically, HRS § 269-15 provides that the Commission can enforce compliance with one of its orders against not only a public utility, but also against any “person.” Specifically:

If the public utilities commission is of the opinion that any public utility or **any person** is violating or neglecting to comply with any provision of this chapter or of **any rule, order, or other requirement of the commission, . . .** or that in any way it is doing what it ought not to do, or not doing what it ought to do, it shall in writing, on paper or electronically, inform the public utility **or the person** and **may institute proceedings before it, as may be necessary to require the public utility or the person to correct the deficiency.**

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<sup>2</sup> As discussed more fully herein, such commitments need to be within the scope of issues identified for remand by the Hawaii Supreme Court.

HRS § 269-15(a). *See generally* HAR § 16-608-4 (defining “person” as including any individual, firm, corporation, company, or association); *see also* §HRS 1-19 (defining “person” to “signify not only individuals, but corporations, firms, associations...”).

The Commission’s regulations also provide for it to commence investigative and “[e]nforcement proceedings against any person violating any regulatory law.” HAR § 16-608-2; *see also* § 16-608-14 (allowing the Commission to “investigate alleged or suspected violations of the regulatory law,” and issue an order to show cause that “include[s] an order of abatement that requires the respondent to cease and desist from any present or future violations of the regulatory law or commission orders”). *See generally* § 16-608-4 (defining regulatory law to include “Commission orders”). The Commission also “may issue a civil citation to any person . . . [v]iolating, allegedly violating, or suspected of violating any regulatory law.” HAR § 16-608-21(a). The civil citation may likewise contain an order of abatement. *Id.* at (c)(1).

Further, the Commission “may also exercise its authority through implied powers not expressly granted, inasmuch as ‘the legislature cannot foresee all the problems incidental to carrying out the duties and responsibilities of the agency.’” *Asato v. Procurement Policy Bd.*, 132 Hawai‘i 333, 347–48, 322 P.3d 228, 241–42 (2014) (quoting *Haole v. State*, 111 Hawai‘i 144, 152, 140 P.3d 377, 385 (2006)). Thus, notwithstanding the express enforcement powers conferred by the above-mentioned statute and regulations, the Commission has the implied power to enforce its own orders to carry out its duties.

Not only does the Commission have the legal ability to enforce conditions on non-regulated entities, but it has, in fact, imposed such conditions on numerous occasions. *See, e.g.* Decision and Order No. 38006, issued on October 6, 2021 in Docket No. 2018-0434 at 43 (wherein the Commission ordered that “Mililani Solar be required to provide updates to the

Commission and Consumer Advocate” on supplier delays); Decision and Order No. 34714, issued on July 27, 2017 in Docket No. 2017-0108 at 83-84 (wherein the Commission ordered NRG to file new material developments regarding its transformation plan, as well as monthly progress reports for its projects); Decision and Order No. 35609, issued on July 30, 2018 in Docket No. 2018-0053 at 76-78 (adopting reporting requirements for MNEP as conditions of approval). The fact that the Commission has imposed conditions of approval directly on developers in other dockets further confirms that it has the authority to do so here.

Accordingly, the Commission’s conclusions that it cannot enforce conditions against Hu Honua to address the concerns raised by the Commission, including the ability to hold it to its carbon commitment, are contrary to law and past Commission practice, and therefore cannot serve as a basis to withhold approval of the A&R PPA. As Hu Honua has made the necessary commitments that the Project will be carbon negative, and the law is crystal clear that the Commission has the authority to enforce such measures, there should be no uncertainty regarding such commitments. As such, the Commission has the opportunity to authorize a firm generation facility that will be net carbon negative, which is of a great benefit to not only customers, but to the planet. For these reasons, the Company requests that the Commission should reconsider its order on this point.<sup>3</sup>

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<sup>3</sup> It is noted that footnote 214, on pages 86-87 of D&O No. 38395 seems to acknowledge that the Commission may have the ability to enforce its orders, but such enforcement might require the Commission to actually establish noncompliance prior to any sanction in the event that Hu Honua might not immediately agree with the Commission’s position. However, the Commission’s obligation to establish a violation and a party’s ability to challenge such a determination is inherent in any enforcement action the Commission may undertake, and, in fact, is required by due process. Put another way, there is always a possibility that the party does not agree with the Commission’s position and may challenge such a position. That does not mean that the Commission cannot enforce conditions.

**C. D&O NO. 38395 Improperly Focuses On Facts That Are Outside The Scope Of The Mandate From The Hawai‘i Supreme Court**

While the Company acknowledges that it has made this argument previously, the Company believes it is necessary to reiterate that the Commission’s focus on issues outside the scope of the remand from the Hawai‘i Supreme Court is in direct contravention of the Court’s specific instructions and Hawai‘i law.

Specifically, in D&O 34726 which approved the A&R PPA in 2017, the Commission found that “the purchased power costs and arrangements in the A&R PPA appear reasonable, prudent, in the public interest, and consistent with HRS chapter 269 in general and HRS § 269-27.2(c), in particular.” D&O 34726 at 60. It is undisputed that the terms of the A&R PPA have not changed since the Commission made that finding. Further, as confirmed by the testimony of LOL, Tawhiri, and the Consumer Advocate at the evidentiary hearing, no party appealed the Commission’s prior decision to the Hawai‘i Supreme Court arguing that the Project pricing was unreasonable.

In addition, the evidentiary record of these remanded proceedings clearly establishes that GHG emissions will be reduced as a result of the approval of the A&R PPA. As such, Hawai‘i Electric Light submits that a rejection based on the pricing of the A&R PPA at this time, would be inconsistent with *HELCO II*’s mandate to focus on the limited remand issues in the Commission’s further proceeding. Put simply, if the price is the same as it was during the prior approval, and the GHG emissions are reduced, to deny approval based on pricing would be essentially raising an entirely new issue beyond the scope of the remand - and would inevitably lead to another appeal consistent with *HELCO II*. For these further reasons, the Company respectfully submits that reconsideration of D&O No. 38395 is required.

**D. Hawai'i Electric Light's Unambiguous Position Is That The Hu Honua Project Will Provide Needed Benefits, Including Grid Services, Fossil Fuel Reduction, and Increased Energy Security**

On page 119 of D&O No. 38395, the Commission states, "HELCO has stated that it does not have a current need for the Project." While this contention is not sourced, it appears to be based on the conclusory statements on page 108, where the Commission states "adding the Project to the grid would not satisfy any urgent grid needs, as determined by the system's energy reserve margin, as well as from HELCO's adequacy of supply reports. While the Project may provide certain grid services, as described by HELCO and Hu Honua, these grid services are not exclusive to the Project, and could be provided by other existing or future resources." As an initial point, Hawai'i Electric Light notes that these conclusions are taken out of context and are inconsistent with the record. In fact, the Company recently filed its April, 2022 Updated Grid Needs Assessment in in Docket No. 2017-0352, wherein it stated: "The Base Scenario has ERM needs that vary seasonally by month as well as time of day. These needs are resolved in the Renewable Firm Scenario by the planned continuation of HEP and in service of Hu Honua, both dispatchable firm generators." Updated Grid Needs Assessment at 18.

Further, mere citation to the Company's energy reserve margin filings and its adequacy of supply filings as a basis to conclude that the Hu Honua Project is not needed, ignores that these reports only focus on the capacity needs for Hawai'i island. Further, these reports do not cover the entire term of the A&R PPA, and are not so intended. The focus on one single grid service, while disregarding other necessary grid services (including inertia, frequency regulation, up-reserves) confirms that these reports are not sufficient to support the Commission's conclusions.

In addition, the Commission's use of these issues as a basis for denial, again disregards the specific direction of the Hawai'i Supreme Court, as these issues have nothing to do with the limited permitted focus on remand.

**1. The Commission's Decision Contravenes The Hawai'i Supreme Court's Mandate To Limit The Commission's Focus To Consideration Of GHG Emissions On Remand**

As noted herein, the Hawai'i Supreme Court in *HELCO II* held that "the parties are fixed in the same position they were in following HELCO I[,] and required that "the PUC, in considering the Amended PPA remains obligated to follow the instructions we provided in HELCO I." *In re Hawai'i Electric Light Company, Inc.*, 149 Hawai'i 239, 242, 487 P.3d 708, 711 (2021).

Here, the non-economic benefits of the Hu Honua Project have already been recognized by the Commission, including the following findings:

- (1) "The commission finds that the 'opportunity to increase the amount of renewable energy on HELCO's system, without increasing the amount of as-available, intermittent renewable energy resources on HELCO's system[,] continues to be in the public interest."<sup>4</sup>
- (2) "the Project provides the most viable opportunity to add firm, dispatchable, renewable generation in the near term" (as opposed to waiting for subsequent procurement).<sup>5</sup>
- (3) "the commission findings that the Project will provide performance and operational features similar to HELCO's existing steam generators with dispatchable capacity, inertial and primary frequency response, regulation and load following capabilities, and will add to the diversity of HELCO's existing portfolio of renewable energy resources."<sup>6</sup>
- (4) "As a firm, dispatchable biomass resource, the Project provides diversification of HELCO's generation portfolio in two ways: (1) the Project's fuel source is different than any other energy resource and is less vulnerable to weather- and climate-related reliability

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<sup>4</sup> D&O No. 34726 at 30.

<sup>5</sup> *Id.* at 31.

<sup>6</sup> *Id.* at 56.

concerns, and (2) the Project adds another form of firm, dispatchable renewable energy with operational characteristics similar to HELCO's existing fossil-fueled steam generators."<sup>7</sup>

(5) "Based on the commission's review of the record, including confidential information, it appears that the addition of the Project may primarily displace fossil fuel generation resources."<sup>8</sup>

(6) "The Project is anticipated to provide community benefits, including economic stimulation and the creation of jobs, both at the Hu Honua facility and supporting jobs in industries such as forestry, harvesting, and hauling."<sup>9</sup>

(7) "The Project provides an opportunity for improved vegetation management, like the removal and conversion of albizia trees into biomass feedstock."<sup>10</sup>

Yet, despite these findings already existing in the record and having not been disturbed by the limited remand, it appears that the Commission is trying to support its denial in D&O No. 38395 based on the implication that the noneconomic grid benefits that the Hu Honua Project will provide, are not needed.

**2. The Record Clearly Demonstrates That The Hu Honua Project Will Provide Substantial Noneconomic Benefits, Including Fossil Fuel Reduction and Grid Reliability.**

To the extent that the Commission is contending that the Hu Honua Project will not immediately provide benefits to the Hawai'i Electric Light grid is simply not consistent with the record in the docket, nor the position of the Company. As shown in the testimonies of Company witnesses Christopher Lau, Robert Uyeunten, and Lisa Dangelmaier, the Project will have significant noneconomic benefits, including providing energy generation, grid stability, spinning reserves, and excess capacity from renewable sources.

Specifically at the evidentiary hearing, Lisa Dangelmaier, the Company's Director of System Operations for Hawai'i and Maui Counties, provided substantial uncontroverted

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<sup>7</sup> *Id.* at 59.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 60.

<sup>10</sup> *Id.*

evidence of the benefits to the Hawai'i island grid by operation of the Project. Ms. Dangelmaier first confirmed that the Project's proposed steam units provided operational benefits to the Company's grid in that they were extremely stabilizing, provided high inertia, and were not prone to fast tripping. *See* Lisa Dangelmaier, Hearing Day 2, 2:39-40. She also confirmed that the Project's units have higher inertia, which is a positive, because it results in a lower rate of change of frequency for imbalances, which helps to stabilize the system. She also confirmed that use of the Project's units would be able to provide primary and supplemental frequency response, and voltage regulation at the point of interconnection, with the added benefit to the grid that it is a firm dispatchable renewable resource, with no finite energy resource such as a battery storage facility. *Id.* at 2:45-2:46. Ms. Dangelmaier further acknowledged that in the near term, the Company will need additional synchronous generation to provide proper grid stability, and the Project's units will be able to provide this. *Id.* 5:24. She also confirmed that the Project operating at its 10 MW minimum level will further provide spinning reserve for the grid and will contribute to the minimum regulating reserve needs for the Hawai'i island system. *Id.* at 5:24-25.

Moreover, as a further matter on this topic, on cross-examination, Hawaiian Electric's Vice President of Resource Procurement, Rebecca Dayhuff Matsushima also confirmed that the Project will provide grid services to facilitate integration of intermittent forms of renewable energy without sacrificing grid stability, and it would provide spinning reserve and upward regulation – thereby bolstering the Company's grid stability. *See* Rebecca Dayhuff Matsushima, Hearing Day 1, at 43:30. Finally, Ms. Dangelmaier summarized the operational benefits to be derived by the Project by confirming that the Project will operate synchronous units, provide inertial response, primary frequency response, load following, supplemental frequency response,

voltage regulation at the point of interconnection, fault current, and firm capacity for availability supply. *See* Lisa Dangelmaier, Hearing Day 2, at 5:40-42. The uncontroverted record shows that the Hu Honua project will contribute to higher generation reliability and provide these needed grid benefits as soon as the Hu Honua Project is online.

The Company notes that the Commission has already recognized the importance of improved grid reliability by seeking to establish penalties for generation-related outages in the Performance Based Regulation docket, Docket No. 2018-0088. The Company submits that the Commission's actions in denying projects that will improve grid reliability are inconsistent with its actions in seeking to establish penalties for failure to meet such standards.

The Company agrees with the Commission's statement that these grid services are not unique to the Hu Honua Project, as they could come from other synchronous generation sources. However, importantly, in the near term - those services are likely to be sourced from increased use of the Company's existing fossil generation resources. In addition, the Company's updated RPS estimate for these remanded proceedings provided in its updated exhibit HELCO-201, confirms that the Project is expected to contribute 9.5 percentage points towards Hawai'i Electric Light's RPS and 1.0 percentage point towards the consolidated Companies' RPS. These benefits also remain uncontroverted on the record and would not be achieved if the Company were compelled to use more fossil generation.<sup>11</sup>

Alternatively perhaps, the above-described services could come from a new firm generation procurement; however, the terms of such hypothetical project are completely unknown at this time. Moreover, the timing of any such project would certainly be significantly

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<sup>11</sup> On this point, the Company's recently filed Updated Grid Needs Assessment notes: "The annual generation figures show that less fossil fuel is used in the earlier years with Hu Honua online compared to the Base scenario." April 2022 Updated Grid Needs Assessment at 13.

delayed and would undoubtedly have more development risk than the Hu Honua Project, which stands at the precipice of completion – and nearly ready for use in the near term.<sup>12</sup>

For these reasons, the Company submits that the Commission’s implication that the Project will not be needed is not a proper basis for consideration at this stage, and reconsideration of D&O No. 38395 is appropriate.

### III. CONCLUSION

Hawai‘i Electric Light respectfully submits that D&O No. 38395 exceeds the scope of the remand from the Hawaii Supreme Court. It also appears to hold the Hu Honua Project to a new GHG standard that is unwarranted. Based on the record before the Commission, reconsideration is appropriate.

DATED: Honolulu, Hawai‘i, June 2, 2022.

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<sup>12</sup> See, e.g., March 10, 2022 letter filed in Docket Nos. 2017-0352 and 2018-0165 at wherein the Company described the anticipated timetable for the procurement of new generation resources, at page 7, noting that “even if the Grid Needs Assessment had already been completed and the process could start in March 2022, new projects would not reach commercial operations until sometime between mid-2026 at the very earliest and late 2027.”

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of	)	
	)	
HAWAII ELECTRIC LIGHT COMPANY, INC.	)	Docket No. 2017-0122
	)	
For Approval of a Power Purchase Agreement for	)	
Renewable Dispatchable Firm Energy and	)	
Capacity.	)	
	)	

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this date, a copy of the foregoing document was duly served upon the following parties via electronically filing with the State of Hawai'i Public Utilities Document Management System and by email, addressed as follows:

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